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LEGAL ASSISTANCE WITHIN THE SOCIALIST COMMONWEALTH OF THE EAST EUROPEAN COUNTRIES

Ivan Sipkov

1987

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I. Introduction

The East European countries of Albania, Bulgaria, Czechoslovakia, East Germany, Hungary, Poland, Romania, and Yugoslavia [1/] introduced, in the post-World War II period, under the dictatorial power of their communist parties and the direct influence of the Soviet Government, legal systems similar to that of the Soviet Union and formed a political bloc within the region.

In the course of the following years, this political bloc was further structured and consolidated, both economically and militarily, by multilateral international agreements creating the Council for Mutual Economic Assistance (CMEA or COMECON) in 1949, and the Warsaw Treaty of Friendship, Cooperation and Mutual Assistance in 1955. [2/] These treaties were supplemented

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1/ With reference to the treaties between these countries, the following abbreviations will be used: Albania, A; Bulgaria, B; Czechoslovakia, Cz; East Germany, G; Hungary, H; Poland, P; Romania, R; USSR, SU; and Yugoslavia, Y. The following abbreviations will also be used:

DV - Dŭrzhaven Vestnik, official law gazette of Bulgaria;
GBl - Gesetzblatt, official law gazette of the German Democratic Republic;
Bul. Of. of R. - Buletinul Oficial, official law gazette of Romania;
Sbírka Zákonů - official collection of laws of Czechoslovakia;
UNTS - United Nations Treaty Series;
Vedomosti - official law gazette of the USSR

2/ Yugoslavia has not joined the CMEA, and Albania ceased to participate in its activities at the end of 1961. However, later Mongolia (1962), Cuba (1972), and Vietnam (1978) adhered to CMEA. Yugoslavia has not joined the Warsaw Pact; Albania left the Pact in 1961 and formally withdrew in 1968. Both countries, however are included in this study since the treaties under discussion include them.

by an interlocking system of international agreements in various fields including economy, defense, trade, culture, etc. Moreover, through international conventions related to law, the European countries ruled by a communist party initiated and achieved legal unification and practice within their territorial areas. Of special note are the treaties concerning legal assistance in civil, family, and criminal cases concluded on a bilateral basis but revealing identical scope, methods, and wording and serving as the basis for the formation of a legal entity--the European Socialist Commonwealth of Communist States. 3/ Today these documents uniformly cover international law relations previously governed by a number of conventions, in particular those related to civil and family law. In effect, they have established a fairly uniform body of conflict rules of private international law, in addition to the unification and codification of this branch of law by five of the nine countries of the Bloc. 4/ The treaties also offer solutions for cases related to civil procedure, criminal law and procedure, and extradition.

3/ K. Gryzbowski, The Socialist Commonwealth of Nations. Organizations and Institutions 9 (1964).

4/ I. Sipkov, The Codified Statutes on Private International Law of the East European Countries: A Comparative Study 7 (1986).

It must be pointed out here that all of the East European communist countries have entered into bilateral treaties on legal assistance in civil, family, and criminal cases. To date, only Albania does not yet have such treaties with Bulgaria, Poland, and Yugoslavia. 5/

The present study will survey the main features of legal assistance effective in the East European Socialist Commonwealth. It will also emphasize important variations and deviations from the uniform approach and the treatment of certain legal rules formulated in these documents. 6/

II. The Treaties on Legal Assistance in General

The term "legal assistance" used in the treaties in the languages of the countries involved is the following:

Albanian:	ndihme juridike
Bulgarian:	pravna pomosht
Czechoslovak:	právní pomoc
German:	Rechtshilfe (Rechtsverkehr)

5/ Out of the possible 36 international documents, 33 have been signed and are in force. For a new trend of such treaties between East European and West European countries, see F. Majoros, "Eine neue Generation von Rechtshilfeverträgen der osteuropäischen Staaten," 27 Osteuropa-Recht 190-231 (1981).

6/ A discussion of the general provisions and the conflict of laws rules reflected in the legal assistance treaties between the East European countries, as in force in 1959, may be found in U. Drobnig, "Die Kollizionsnormen in den Rechtshilfeverträgen der Staaten des Ostblocks," 6 Osteuropa-Recht 154-184 (1960). This study, however, deals primarily with family law and the recognition and enforcement of foreign judgments, in addition to the survey of the treaties' general provisions.

Hungarian:	jogsegély
Polish:	pomocy prawna
Romanian:	asistenţă juridică
Russian:	pravova pomosht
Serbo-Croatian:	pravna pomoć

The title used in the international documents discussed here is, with only slight variations, similar: Treaty concerning "legal assistance," or "mutual legal assistance," or "the provisions of legal assistance," or "legal relations," or "the conduct of legal relations," or "legal assistance and legal relations," in civil, family, and criminal "cases," or "matters."

The legal principles, rules, and procedures covered in the treaties may be grouped into the following categories:

A. General Provisions,

B. Legal Assistance in Civil and Family Cases, and

C. Legal Assistance in Criminal Cases.

Part B may be subdivided into chapters as follows:

1. Personal Status,
2. Family,
3. Property,
4. Succession,
5. Legal Costs,
6. Recognition and Enforcement of Judgments, and
7. Transmittal of Extracts from Civil Register and Other Documents.

Part C may also be subdivided into the following chapters:

1. Extradition, and

2. Judicial Assistance in Criminal Matters.

In their preambles, the treaties state in general terms that the contracting parties express the desire to further strengthen the fraternal bonds of friendship to the maximum and that they are intended to develop cooperation in the sphere of legal relations by making arrangements for mutual legal assistance.

The text of each treaty is done in duplicate in the languages of the contracting countries, and both texts are considered equally authentic. Although the language of communication between the countries is their own, in several instances the countries involved have chosen to use the Russian language even though the Soviet Union is not a party to the treaty. Thus, Russian seems to prevail in the international relations within the Socialist Commonwealth of states ruled by communist parties. 7/

All of these international documents were subject to ratification, and they entered into force thirty days after the exchange of the instruments of ratification. The treaties remain in force for a period of five years from the date of their entry into force and are automatically extended for successive 5-year terms unless they are denounced six months or

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7/ See also infra Chapter B, Basic Principles.

one year before the expiration of the current term. 8/ Several treaties were concluded for an indefinite period of time and will cease to have an effect upon the expiration of one year from the date on which notice of its termination is given by one of the parties. 9/ A few of the treaties were concluded for terms of five years or ten years. If not denounced, these treaties then remain in force indefinitely or until one year's notice of termination is given. 10/

Basically, the primary purpose as defined in these agreements is to regulate the cooperation and mutual assistance of the central organs 11/ in the field of legal relations involving civil, family, and criminal matters. A few treaties also expressly state that they are concluded to assist the authorities of both states to realize the socialist legality and to facilitate the citizens in protecting their rights and legal interests. 12/

8/ E.g., B-Cz, art. 90; B-H, art. 87; G-R, art. 79; P-R, art. 83; P-SU, art. 85.

9/ E.g., B-SU, art. 82(2); B-Y, art 89; P-Y, art. 96; SU-Y, art. 77(2).

10/ E.g., A-Cz, art. 74; A-H, art. 77; A-SU, art. 74; Cz-Y, art. 85.

11/ Under central organs are included mainly the Ministry of Justice and the Chief Prosecutor's Office. E.g., A-H, art. 3; B-Cz, art. 2(4).

12/ E.g., B-Cz, art. 1(1).

III. Basic Provisions

A major principle in all these treaties is that, with respect to personal and property rights, nationals [13]/ of one country enjoy in the territory of the other country the same legal protection as nationals of the host country. This principle of equal legal treatment of citizens within the European Socialist Commonwealth is also extended mutatis mutandis to bodies corporate (juridical persons). As a result, individuals and the legal entities have free and unimpeded access to the courts, the prosecutor's office, the notarial organs (called judicial authorities), and to other officials who have jurisdiction in cases which are treated by the international agreement, including the right to bring actions on the same terms and in the same manner before such authorities under the same conditions as nationals of the other state.

Along this line, the judicial authorities as well as other officials of the two countries, on request, provide one another with legal assistance in civil, family, and criminal matters. Communications are conducted through the ministries of justice and the chief prosecutor's offices, [14]/ or through the "central

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[13]/ Only one treaty provides a definition of this term: under B-G, art. 2(3), citizens of one country are those persons who are considered its citizens in accordance with its laws.

[14]/ E.g., B-H, art. 3; B-Y, art. 7.

organs," 15/ "the appropriate authorities," 16/ "the judicial authorities," 17/ "the central judicial authorities," 18/ or "the competent authorities," 19/ as specified in some treaties.

A small number of treaties prescribe that such assistance may be refused if it might endanger or be prejudicial to the sovereignty or security of the country, 20/ to the social and economic order of the country, 21/ or is incompatible with the country's fundamental legal principles. 22/ Legal assistance may also be refused in criminal cases in the following instances:

a. if the act is not punishable,

b. if the act is a nonextraditable offense, 23/

c. if it is in the competence of the courts of the country applied to, 24/ or

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15/ E.g., A-Cz, art. 3; A-SU, art. 3; B-Cz, art. 2(3); B-SU, art. 3; G-R, art. 3: P-SU, art. 3.

16/ E.g., SU-Y, art. 3.

17/ E.g., A-Cz, art. 3: G-R, arts. 2 and 3; P-R, art. 4.

18/ E.g., A-H, art. 3; Cz-Y, art. 14.

19/ E.g., Cz-Y, art. 4; SU-Y, art. 3.

20/ E.g., B-Cz, art. 7; B-Y, art. 57; Cz-Y, art. 13; P-SU, art. 12; P-Y, art. 65; SU-Y, art. 12.

21/ G-R, art. 15.

22/ B-Y, art. 57; Cz-Y, art. 13; SU-Y, art. 12.

23/ A-SU, art. 71; Cz-Y, art. 82; P-SU, art. 80; SU-Y, art. 56.

24/ A-SU, art. 71; SU-Y, art. 56.

d. if it is a political offense or a purely military offense. 25/

The scope of legal assistance is limited to the performance of specific acts required in connection with judicial proceedings, such as the interrogation of litigants, witnesses, experts, and other persons, the conduct of expert examinations, the execution of searches and seizures, the conduct of judicial inspections in situ, the transmittal and delivery of physical evidence, and the preparation, transmittal, and delivery of records and documents. 26/

Applications for legal assistance that bear a signature and an official seal must provide certain information and follow a specific procedure. However, in executing an application for legal assistance, the authority applied to must follow its own laws. At the request of the applicant authority, it may apply the laws of the applicant state, provided that these laws do not conflict with the laws of the country applied to. If the exact address of the person referred to in the application is unknown, the authority applied to must take the necessary steps to ascertain the correct address. 27/ If it is not possible to execute an application, the documents must be returned to the applicant authority. A few treaties contain a provision

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25/ B-Y, art. 56.

26/ E.g., A-Cz, art. 4; A-H, art. 4; B-H, art. 4; P-R, art. 3; SU-Y, art. 5.

27/ E.g., B-H, art. 8(3).

which specifically requires that addresses requested by a national of the one country for a person residing in the other country be traced. 28/

In serving documents, the authority applied to must comply with its own legal provisions, provided that the document to be served is drawn up in the language of that state or is accompanied by a certified translation into its language. The serving of documents must be confirmed by the authority applied to with the information on whom the document has been served. Each country has the right to serve on its own nationals who are domiciled in the other country through the intermediary of its diplomatic agents or consular officials. 29/ However, in such cases, as several treaties expressly state, no compulsory measures may be used. 30/

A special provision of the treaties prescribes that a person of whatever nationality who is, in response to a summons, to appear as a witness or expert in the the territory of one of the countries may not be either prosecuted or punished for an offense committed before he crossed the frontier of the applicant state. The witness or expert forfeits his immunity if he fails to leave the territory of the applicant state within one week after completion of his duty to act as an expert.

28/ B-H, art. 13; Cz-P, art. 88; Cz-Y, art. 16.

29/ A-Cz, art. 11; A-H, art. 10; A-SU, art. 11; B-H, art. 10(1); B-SU, art. 10; B-Y, art. 17; Cz-Y, art. 10; G-R, art. 12; P-SU, art. 10(1); SU-Y, art. 11.

30/ E.g., A-H, art. 10; B-Cz, art. 6; B-H, art. 10(2); B-Y, art. 17; Cz-Y, art. 10; P-SU, art. 10(2).

Some treaties also provide that if the law of the country so requires, each country may interrogate its own citizens as litigant, witnesses, and experts through the appropriate diplomatic or consular missions. 31/

The treaties further prescribe that upon request the authorities of the two countries are obliged to serve each other with information on the legislation of their respective states including the law in force or the law repealed, as well as to provide legal texts currently in force in their respective territories. 32/ This rule also covers information on the practice of the authority having jurisdiction in civil, family, and criminal matters, 33/ and on the exchange of experience in the field of legislature, as well as on any legal 34/ or specific questions. 35/

With reference to the validity of documents, if drawn up or attested to in due form in the territory of the other state by a competent authority, the documents must be accepted in one state without authorization or legalization in the territory of the other state. Also, documents of nationals which have been signed and witnessed in accordance with the regulations in

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31/ A-Cz, art. 8; A-H, art. 7; A-SU, art. 8; B-H, art. 7; B-SU, art. 7; Cz-Y, art. 11; G-R, art. 9; P-R, art. 11; P-SU, art. 11; SU-Y, art. 16.

32/ A-Cz, art. 14; A-SU, art 14; B-SU, art. 15; Cz-Y, art. 14; P-SU, art. 14; SU-Y, art. 14.

33/ E.g., B-H, art. 12(2).

34/ A-Cz, art. 14; B-H, art. 12; B-SU, art. 15; Cz-Y, art. 14; Cz-R, art. 16; P-R, art. 16; SU-Y, art. 14.

35/ A-Cz. art. 14: B-Cz, art. 11; B-Y, art. 53; Cz-Y, art. 14.

Any dispute arising in connection with the application and interpretation of the treaty must be settled by the Ministry of Justice and the Chief Prosecutor of the two countries within the limits of their competence [39]/ or through diplomatic channels. [40]/

IV. Civil and Family Law

A. Personal Status

Legal capacity of individuals and their capacity for legal action are determined according to the law of the state of which the person concerned is a national, lex patriae. The legal age of majority, or full legal capacity in the European countries ruled by a communist party, is eighteen. [41]/ Several treaties specify that for the purpose of conducting everyday transactions ("usual," "everyday life," "needs"), legal capacity is determined by the law of the state in whose territory the transaction was concluded, lex loci contractus. [42]/ Several treaties, however, are silent on this point. [43]/ The legal capacity of bodies corporate is determined by the law of the country in whose territory it was constituted. [44]/

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[39]/ E.g., B-H, art. 85.

[40]/ E.g., P-Y, art. 93; SU-Y, art. 75.

[41]/ I. Sipkov, supra note 4, at 29.

[42]/ E.g., B-H, art. 16(3); B-SU, art. 17(2); the B-Y treaty contains a special provision concerning legal capacity in its art. 37.

[43]/ E.g., A-Cz; A-H; A-SU; B-Y; Cz-Y; G-R; P-R; P-SU; P-Y; SU-Y.

[44]/ E.g., B-H, art. 16(2).

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[43]/ E.g., A-Cz; A-H; A-SU; B-Y; Cz-Y; G-R; P-R; P-SU; P-Y; SU-Y.

[44]/ E.g., B-H, art. 16(2).

The declaration of persons as missing or dead and the establishment of the fact of death are within the jurisdiction of the state of which the person was a national at the time he was last known to be alive. The judicial authorities of one country may declare a national of the other country missing or dead, or establish the fact of death, on application of any person resident in its territory whose rights and interests are governed by its law. In these cases, the authorities apply the law of their own state.

The state of which a person to be declared legally incapable is a national has jurisdiction in this matter. 45/ If there are grounds for declaring a person incapable who has his domicile or residence in the territory of one country but who is a national of another country, this latter country must notify the judicial authorities of the former country. In urgent cases the procedure is simplified. These provisions apply also to the restriction of legal capacity; however, a small number of treaties do not treat this problem. 46/

45/ E.g., B-Cz, art. 29; Cz-Y, art. 20.

46/ E.g., B-H and B-SU.

B. Family

The form of marriage is determined by the law of the state where the marriage is "contracted," [47]/ "takes place," [48]/ or is "solemnized" (lex loci actus). If the marriage is solemnized before a diplomatic or consular representative, then the law of the sending state is applicable. [49]/ Strangely enough, some treaties, primarily those with Albania, the Soviet Union, and Yugoslavia are silent on the question of form. [50]/ The conditions determining capacity to marry for each prospective spouse is decided in accordance with the law of his or her nationality (lex patriae). [51]/

Personal and property relations between the spouses who are nationals of one state but are domiciled in the territory of the other are determined by the law of the state in which both are nationals [52]/ or domiciled. [53]/

If one spouse is domiciled in the territory of one state and the other in the territory of the other state and both are nationals of one state, their personal and property rights are determined by the law of the state of which they are both

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[47]/ E.g., B-Cz, art. 32(2); B-H, art. 18(1); B-SU, art. 22.

[48]/ E.g., A-H, art. 27; Cz-Y, art. 23(3); G-R, art. 22(1); P-R, art. 22; P-SU, art. 28.

[49]/ E.g., B-H, art. 18(2); G-R, art. 22(2); P-R, art. 22.

[50]/ E.g., A-Cz; A-SU; B-Y; SU-Y.

[51]/ E.g., B-H, art. 18(3).

[52]/ E.g., B-H, art. 19(1).

[53]/ E.g., P-SU, art. 29.

nationals. If one spouse is a national of one state and the other is a national of the other state, and if one is domiciled in the territory of one state and the other in the territory of the other state, their personal and property relations are determined by the law of the state in whose territory they last had a common domicile. 54/

With regard to maintenance obligations based on family law, the law of the person (lex patriae) who is entitled to maintenance is applicable. 55/

In cases of the dissolution of a marriage 56/ where both spouses are nationals of one state at the time the petition for dissolution of marriage is filed, the authorities of that state have jurisdiction. If the spouses are domiciled in the territory of the other state, the authorities of that state also have jurisdiction. If one spouse is domiciled in the territory of one state and the other in the territory of the other state, the authorities of both states have jurisdiction. The conditions for the dissolution of marriage are determined by the law of the state of which the spouses are nationals.

The authorities of both states have jurisdiction in the divorce proceedings under the following conditions:

54/ E.g., B-Cz, art. 37; B-H, art. 19(2).

55/ E.g., B-H, art. 23.

56/ E.g., Cz-Y, art. 26; G-R, art. 24.

-- if at the time of filing the petition for dissolution of the marriage in one of the states one spouse is a national of one state and the other a national of the other state and both are domiciled in the territory of the state, or

-- if one spouse is domiciled in the territory of one state and the other in the territory of the other state. 57/

The authority which considers the petition for dissolution of the marriage must apply the law of its own state. A few documents are silent on the question of divorce. 58/

Some treaties also contain provisions regarding proceedings for declaring a marriage null and void by reason of informality or failure to satisfy the conditions determining capacity to marry as well as to the question of which court has jurisdiction to establish the existence or nonexistence of a marriage. 59/

Legal relations between parents and children are determined by the law of the state in whose territory they have a common domicile. If the domicile of one or both of the parents is in the territory of one state and the domicile of the child

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57/ E.g., B-H, arc. 20(2).

58/ A-SU; P-SU; SU-Y.

59/ Not included in the SU treaties.

is in the territory of the other state, the legal relations between them are determined by the law of the state of which the child is a national. 60/

Actions to contest or establish paternity or maternity or to establish that a child is the issue of a particular marriage are decided in accordance with the law of the state of which the child is a national by birth. 61/ In the case of a child born out of wedlock, the legal relations between the child and his mother or father is determined by the law of the state of which the child is a national. If a child is a national of one state but is a resident in territory of the other state, the law most favorable to the child is applicable.

With regard to adoption or its termination, the applicable law is that of the state of which the adopter is a national at the time of adoption. If the child is a citizen of the state where he is being adopted and the law reqires the consent of the child or his legal representative or the permission of the competent authorities, then the adoption must comply with this requirement. 62/ These provisions are also applied mutatis mutandis to the termination of an adoption. Under some treaties, if both the adopter and the person adopted are citizens of the same state, the law of that state is applicable. 63/

60/ E.g., A-Cz, art. 33.

61/ E.g., B-H, art. 22(1).

62/ Not in the SU-Y treaty.

63/ E.g., SU-Y, art. 29.

Guardianship and curatorship over nationals of a state may be established by the authorities of the state of which the prospective ward is a national. The conditions for establishing or terminating guardianship or curatorship is determined by the law of the state of which the prospective ward is a national. With regard to the legal relations between a guardian or curator and his ward, the applicable law is that of the state whose authority appointed the guardian or curator. With regard to the obligation to accept the office of guardian or curator, the applicable law is that of the state of which the guardian or curator is a national.

C. Property

In the field of relations involving property, the form of a transaction is prescribed by the law applicable to the transaction itself. 64/ It is, however, deemed sufficient if the law of the place where the transaction is concluded is followed. 65/ The form of the transaction relating to immovable property and the court having jurisdiction over the matter is to be determined by the law of the state in whose territory such property is situated, lex rei sitae. 66/ Some treaties specify that these provisions do not apply to property relations between spouses. 67/ If both spouses are nationals of one country and

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64/ E.g., B-H, art. 28; Cz-Y, art. 33; P-Y, art. 32.

65/ E.g., Cz-Y, art. 33(1); P-SU, art. 41.

66/ E.g., B-H, art. 29(1).

67/ E.g., B-H, art. 29(2).

domiciled in the territory of another, the applicable law with regard to their personal and property relations is the law of the country of which they are nationals. If they are of different nationality, then the law of their last domicile is to be applied.

Liabilities that arise from an unlawful act or from any other event entailing an obligation to make compensation for damages are governed by the law of the state in whose territory the act or event occurred. The courts of this country have jurisdiction. As a result the injured party may institute proceedings in a court of the state in whose territory the defendant is either domiciled or has property. 68/

D. Succession

In the field of relations related to succession, the principle of equality 69/ is applied. Accordingly, citizens of either state enjoy the same rights as citizens of the other state who reside in the territory of the latter with respect to the capacity to make wills and dispose of property mortis causa situated in the territory of the other state, or of rights to be executed or exercised in the territory of the other state, and as regards the capacity to succeed to such property or

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68/ E.g., B-Cz, art. 44; SU-Y, art. 29.

69/ E.g., A-H, art. 38; A-Cz, art. 31; B-H, art. 30; B-Y, arts. 19-22; Cz-Y, art. 35; P-R, art. 37; SU-Y, art. 36.

rights. The property or rights descend to them under the same conditions as those that apply to citizens who reside in the state's territory.

Succession to movable property is governed by the law of the state where the decedent was a national at the time of his death. Succession to immovable property is governed by the law of the state in whose territory the property is situated, lex rei sitae. Some treaties impose various restrictions on the right of succession. 70/

Escheated movable property reverts to the state of which the decedent was a national at the time of his death, and escheated immovable property reverts to the state in whose territory it is situated. 71/

The capacity to make or revoke a will and the legal effects of defective testamentary dispositions are determined by the law of the state of which the testator was a national at the time the testamentary disposition was made. The form of the testamentary disposition and the method of revocation is determined by the law of the state of which the testator was a citizen at the time the will was made or revoked.

The will of a national of either country is deemed to be a valid form if it was drawn up in compliance with:

1. the law of the state in whose territory it was drawn up, or

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70/ E.g., B-H, art. 31(3).

71/ B-H, art. 32; Cz-Y, art. 37; G-R, art. 37; SU-Y, art. 46.

2. the law of the contracting state of which the testator was a national at the time the will was made or at the time of the testator's death, or the law of the state in whose territory he had domicile at one of those times.

These provisions also apply to the revocation of a will.

With regard to jurisdiction in matters of succession to movable property, the competent authorities are those of the state of which the decedent was a national at the time of his death. In cases of immovable property, the competent authority is that of the country in whose territory the property is situated.

If a national of one country dies in the territory of the other, the competent authority must immediately notify the diplomatic or consular mission of the other state. Information concerning the estate, the heirs, legatees, and the existence of a will must be communicated to the authorities along with information relating to succession and the estate. The diplomatic and consular missions may represent their nationals before the authorities of the other state in succession proceedings. These duties are performed without special power of attorney and without special authorization and notification. 72/ The authorities of the state in whose territory a will is found

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72/ A-Cz, art. 36; A-SU, art 40; B-H, art. 36; B-SU, art. 37; Cz-Y, art. 42; G-R, art. 41; SU-Y, art. 44.

may open it and must publish it. If the testator was a national of the other state, a copy of the will and of the minutes of its publication must be sent to the competent authority of the latter state.

In accordance with its laws, each state must take measures to ensure the protection and administration of any estate left in their territory by a deceased national of the other state. After completion of the succession proceedings, the estate must be delivered through the diplomatic or consular mission as follows:

1. after all claims presented by creditors have been secured,
2. the estate duties and taxes have been paid, and
3. the competent authorities have approved the export of the articles listed. 73/

E. Legal Costs

All the treaties state that the costs of legal assistance may not be claimed for repayment by the country applied to. 74/ These documents also require that each country bear the costs incurred in executing application for legal assistance in its

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73/ A-Cz, art. 39; A-H, art. 46; B-H, art. 39; B-SU, art. 11(1); Cz-Y, art. 45; G-R, art. 44; P-R, art. 45; P-SU, art. 50.

74/ E.g., A-Cz, art. 13; P-SU, art. 13; SU-Y, arts. 22-24.

own territory. 75/ If the costs are collected from a person who is liable for them, then the sums recovered must accrue to the country and authority which recovered them. 76/

A national of one state who appears as a plaintiff in the court of the other state may not be required to deposit security for legal costs (cautio judicatum colvi) on the sole ground that he is an alien or has no domicile, residence, or abode in the territory of the country in question. 77/ In addition, the execution of a judgment cannot be refused on grounds that the winning party in the suit did not previously deposit the costs for carrying out the execution.

Nationals of one country are exempt from the payment of stamp taxes and legal costs in connection with legal proceedings in the territory of the other state. They are also entitled to other privileges and free legal assistance under the same conditions and to the same extent as citizens of the latter state. In cases where a national of Bulgaria is required to pay stamp taxes and legal costs to an authority of Romania but does not have his domicile or residence in the territory of Romania, he must be allowed sufficient time to make such payment.

75/ E.g., B-H, art. 11(1).

76/ E.g., B-H, art. 11(2).

77/ A-Cz, arts. 16-17; A-SU, art. 16; B-H, art. 40; B-Y, art. 2(1); SU-Y, art. 17.

With regard to costs arising in connection with the enforcement of judgments, the applicable law is that of the state in whose territory enforcement is sought. 78/

The costs of extradition are borne by the state in whose territory they were incurred. 79/ The costs of conveyance in transit are covered by the applicant state. 80/

F. Recognition and Enforcement of Judgments 81/

Final judgments of one state in civil and family cases not related to property are recognized in the territory of the other state without further proceedings. This is done unless the authorities of the latter state have rendered a final judgment in the same case or have jurisdiction under the treaty. Also, judgments for damages in criminal cases must be recognized in the other state. Some treaties accept recognition and enforcement of final awards from arbitral tribunals, 82/ and there are several provisions that deal with the enforcement or awards of legal costs. Decisions concerning authorization or enforcement are to be rendered by the judicial authorities of the state in whose territory the judgment is to be enforced.

78/ A-Cz, art. 51; B-H, art. 53; G-R, art. 56; P-SU, art 61.

79/ B-H, art. 79; B-SU, art. 77; SU-Y, art. 73.

80/ E.g., B-H, art. 79.

81/ G. J. Roman, Recognition and Enforcement of Foreign Judgments in Various Foreign Countries 36-53 (1984).

82/ E.g., B-H, art. 47; Cz-Y, art. 52.

Each country is bound to recognize and enforce judgments rendered in the territory of the other state regarding final judgments of judicial authority in civil and family cases relating to property.

Applications for authorization of enforcement must comply with certain requirements. The procedure for recognition and enforcement is determined by the law of the state in whose territory such recognition and enforcement is to take place. The enforcement procedure is determined by the law of the state in whose territory the judgment is enforced. However, recognition and enforcement of a judgment may be refused in a few instances as specified in a particular treaty. 83/ These provisions are applicable to amicable agreements determined before the courts. 84/ The court may also authorize enforcement of an award of legal costs without hearing the litigants. 85/ For the purpose of determining and recovering the costs of enforcement, the applicable law is that of the state in whose territory the cost of the judgment is enforced. 86/

83/ E.g., A-Cz, art. 46; B-SU, art. 52. Recognition and enforcement of the judgment should not conflict with the fundamental principles of the state in whose territory the judgment is to be recognized or enforced, as stated in SU-Y, art. 49(c).

84/ E.g., A-Cz, art. 47; G-R, art. 51.

85/ B-H, art. 58(1); B-SU, art. 57(1).

86/ A-Cz, art. 51; B-H, art. 61; P-SU, art. 61.

G. Transmittal of Extracts from the Civil Register and Other Documents

Each country, upon request, is obliged to transmit to the other for official use extracts from the civil register relating to nationals of the other country, untranslated and free of charge, through diplomatic or consular channels. Applications by nationals of one country for the release of extracts from the civil register relating to their rights and interests may be sent directly to the competent authorities. The documents requested may be transmitted to the applicant through the diplomatic or consular mission of the state whose authority released the document in question, upon payment of a fee. Also, copies of final judgments relating to the personal status of nationals may be requested.

Applications by nationals for the issue and transmittal of documents concerning educational qualifications and employment experience or other documents relating to their personal or property rights and interests may be transmitted. 87/ The documents to be transmitted must be signed and bear an official seal. Authorities of the civil register, at the request of the authorities of the other state, must transmit extracts from the civil register through the highest civil register's authority. These documents are delivered untranslated and free of charge for official use and are addressed directly to the applicant authority.

87/ E.g., B-Cz, art. 25.

If articles or funds in the territory of one state are to be delivered or transferred to a person who is resident in the territory of the other state, the export of the effects or the transfer of the funds are to be carried out in accordance with the law of the state from which the delivery is made. 88/

V. Criminal Law

A major portion of the treaties are concerned with criminal matters, particularly extradition. But the scope of judicial assistance also includes the serving of documents and the performance of specific acts required in connection with legal proceedings in criminal cases. 89/

A. Extradition Law

Without exception, all the treaties prescribe that each country within the European Socialist Commonwealth is obliged to extradite to the other on request persons in its territory whose presence is required for the purpose of criminal prosecution or for the execution of a sentence. Extradition is admissible only for actions which under the law of both states are offenses punishable by deprivation of liberty for a period of more than one year or by a heavier penalty. 90/ All the treaties emphasize that neither state should extradite its own

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88/ E.g., B-H, art. 60.

89/ E.g., SU-Y, art. 55.

90/ E.g., B-H, art. 64.

citizens to the other, 91/ while some do not allow extradition in respect to purely military offenses, 92/ or offenses that relate to the press law, 93/ or if the offense is political in nature. 94/

Extradition may not be admissible, e.g., it may be refused:

1. if the offense was committed by a national of the extraditing state;
2. if it was committed in the territory of the extraditing state;
3. if exemption from prosecution or punishment has been acquired by lapse of time or for other reasons;
4. if the offender has already been prosecuted for the same offense in the territory of the state applied to and has been sentenced and the sentence is final, or the offender has been discharged; and
5. if proceedings with respect to the offense are initiated under the law of both states by way of private complaints.

In addition, some treaties do not permit extradition if the crime was committed outside the state applied to and laws of

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91/ E.g., B-P; Cz-P; P-R, art. 60.

92/ E.g, B-Y, art. 72.

93/ Id.

94/ E.g., B-Y, art. 71(2); Cz-Y.

that state do not prosecute such an act, 95/ or if the extradition might be prejudicial to its sovereignty or security, if the act is not punishable under the law of the state applied to, and if the crime is not extraditable. 96/

The treaties also cover the questions of:

1. obligation to prosecute,
2. method of communication between the prosecutor's office or the ministry of justice,
3. requisition for extradition which must contain the litigant's full name and nationality together with various other documents,
4. detention pending receipt of the requisition for extradition,
5. supplementary information,
6. detention pending receipt of the requisition for extradition,
7. release of temporarily detained persons,
8. postponement of extradition,
9. temporary extradition,
10. conflicting requisitions for extradition,
11. limits to the prosecution of extradited persons, and
12. extadition itself.

The state applied to must notify the applicant state of the time and place of extradition. If the applicant state fails to accept the person claimed within 15 days from the date

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95/ E.g., B-Cz, art. 66.

96/ E.g., SU-Y, art. 56.

fixed for his extradition, the said person may be released from custody. This period may be extended by no more than 15 days upon agreements between the two states.

Additional criminal law aspects covered by the treaties are:

1. re-examination upon receipt of a new requisition,
2. notification of the results of the prosecution of a person extradited to a state,
3. a copy of the final sentence pronounced in respect to such person must be transmitted,
4. each state, upon a request by the other state, must authorize the conveyance through its territory of any person extradited by a third state to the other state--conveyance in transit,
5. costs of extradition must be borne by the state in whose territory the costs were incurred (costs of conveyance of transit by the applicant state),
6. extradition of detained persons for interrogation as a witness in a case,
7. delivery of articles connected with the offense, and
8. transfer of fingerprints of the person referred to above.

B. Judicial Assistance in Criminal Matters

In addition to the numerous provisions that relate to extradition, the treaties deal with judicial assistance in criminal matters in a broader sense, for instance:

-- to hand over summonses, judgments, and other documents,

-- to perform certain judicial proceedings,

-- to execute commissions to examine defendants, witnesses, and experts,

-- to carry out on-the-spot investigations,

-- to execute seizure, and

-- to transmit judicial documents and material evidence.

In serving a request for judicial assistance, the laws are to be observed in the territory of the state in which these acts are to take place. Furthermore, both countries must inform each other concerning the final judgments in criminal matters which are pronounced upon nationals of the other country. Judgments handed down by military courts are an exception to this rule. This obligation is imposed upon the ministries of justice and is to be performed through diplomatic channels every three months.

Some treaties, as indicated elsewhere, provide for the permission to refuse legal assistance in criminal matters. 97/

VI. Conclusion

Legal assistance within the European Socialist Commonwealth, e.g., within the territorial area of the European countries ruled by communist parties, is an extremely well defined and structured arrangement. Assistance is based on the existence of similar legal systems, all of which are patterned after that of the Soviet Union, and on international

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97/ Supra Chapter III, Basic Provisions.

treaties concerning legal assistance. Even though these treaties are bilateral and have nearly identical texts, they create a legal entity in the field of legal relations involving the states belonging to this bloc.

Among the most important features of the treaties that establish a uniform Socialist Commonwealth legal system are the reaffirmation of the nationality principle as the connecting factors:

-- the acceptance of a person's national law regarding his personal and property rights (not that of his domicile), and

-- the inviolability of the principle of sovereignty of each state, thereby demanding the application of each country's laws to its nationals. 98/

In summary, the treaties provide for:

1. a uniform coverage and treatment of several major fields of international relations involving civil, family, and criminal matters;
2. the regulation of the legal status and protection of individual citizens and legal entities with residence in another country within the Socialist Commonwealth;
3. a well arranged method of communication between the central organs and authorities of the states within this area;
4. the service, acceptance, and execution of documents in a most effective manner and by procedure;

98/ Supra note 6, at 183.

5. the exchange of information on legislation in force and that repealed;

6. the procedure for interpretation of the treaties and their provisions; and

7. the use of the Russian language throughout the Socialist Commonwealth in communications among the authorities of the various countries.

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VIII. List of Treaties

1. Albania-Bulgaria, none.

2. Albania-Czechoslovakia
   - Title: Treaty concerning the provision of legal assistance in civil, family and criminal matters.
   - Signed: January 16, 1959, Prague
   - In force: May 28, 1960
   - Text: 363 UNTS 195

3. Albania-German Democratic Republic
   - Title: Treaty concerning mutual legal assistance in civil, family and criminal matters.
   - Signed: January 11, 1959, Berlin
   - In force: December 17, 1959
   - Text: GBl.I, No. 22, April 16, 1959

4. Albania-Hungary
   - Title: Treaty concerning legal assistance in civil, family and criminal matters.
   - Signed: January 12, 1960, Tirana
   - In force: October 28, 1960
   - Text: 520 UNTS 3

5. Albania-Poland, none.

6. Albania-Romania
   - Title: Treaty concerning legal assistance in civil, family and criminal cases.
   - Signed: September 12, 1960, Tirana
   - In force: February 19, 1961
   - Text: Of. Bul. of R., No. 4, January 18, 1961.

7. Albania-USSR
   - Title: Treaty concerning the provision of legal assistance in civil, family and criminal cases.
   - Signed: June 30, 1958, Moscow
   - In force: March 29, 1959
   - Text: 328 UNTS 3

8. Albania-Yugoslavia, none.

9. Bulgaria-Albania, none.

10. Bulgaria-Czechoslovakia
    - Title: Treaty concerning legal assistance and regulation of relations on civil, family and criminal cases.
    - Signed: November 25, 1976, Sofia
    - In force: January 6, 1978
    - Text: DV No. 20, March 14, 1978

11. Bulgaria-German Democratic Republic
    - Title: Treaty concerning legal assistance in civil, family and criminal cases.
    - Signed: October 12, 1978, Sofia
    - In force: October 12, 1979
    - Text: DV No. 92, November 20, 1979; GBl.II, No. 4, July 16, 1979

12. Bulgaria-Hungary
    - Title: Treaty concerning legal assistance in civil, family and criminal cases.
    - Signed: May 16, 1966, Sofia
    - In force: March 10, 1967
    - Text: 724 UNTS 101
    - Amendment: Protocol amending the Treaty signed September 15, 1981, DV No. 4/1982.

13. Bulgaria-Poland
    - Title: Treaty concerning legal assistance and legal relations in civil, family and criminal cases.
    - Signed: December 4, 1961, Warsaw
    - In force: April 19, 1963
    - Text: 484 UNTS 3
    - Protocol: DV No. 83, October 24, 1980 (ratification); Text DV No. 20, March 10, 1981.

14. Bulgaria-Romania
    - Title: Treaty concerning legal assistance in civil, family and criminal cases.
    - Signed: December 3, 1958, Sofia
    - In force: July 4, 1959
    - Text: 417 UNTS 133

15. Bulgaria-USSR
    - Title: Treaty concerning legal assistance in civil, family and criminal cases.
    - Signed: February 19, 1975, Moscow
    - In force: January 19, 1976
    - Text: 1015 UNTS 41

16. Bulgaria-Yugoslavia
    - Title: Treaty concerning mutual legal assistance.
    - Signed: March 23, 1956, Sofia
    - In force: January 26, 1957
    - Text: 367 UNTS 213

17. Czechoslovakia-Albania, see No. 2.

18. Czechoslovakia-Bulgaria, see No. 10.

19. Czechoslovakia-German Democratic Republic
    - Title: Treaty concerning legal relations in civil, family and criminal cases.

Signed: September 11, 1956, Prague
In force: July 5, 1957
Text: Appendix to Sbirka, July 30, 1957, p. 7.
Protocol: Signed: December 10, 1975, in force: October 21, 1976, amending the Treaty, effective December 10, 1975; GBl. II, vol. 1976, p. 207; Sbirka Zakonu No. 133, 1976, Decree of November 1, 1976.

20. Czechoslovakia-Hungary
Title: Treaty regulating legal relations in civil, family and criminal cases.
Signed: November 2, 1961, Prague
In force: July 8, 1962
Text: 438 UNTS 3

21. Czechoslovakia-Poland
Title: Treaty conerning the conduct of legal relations in civil, family and criminal cases.
Signed: July 4, 1961, Moscow
In force: April 19, 1962
Text: 436 UNTS 189

22. Czechoslovakia-Romania
Title: Treaty concerning legal assistance in civil, family and criminal cases.
Signed: October 25, 1958, Prague
In force: April 20, 1959
Text: 417 UNTS 37

23. Czechoslovakia-USSR
Title: Treaty concerning the provision of legal assistance in civil, family and criminal cases.
Signed: August 31, 1957, Moscow
In force: May 10, 1958
Text: 308 UNTS 3

24. Czechoslovakia-Yugoslavia
Title: Treaty regulating legal relations in civil, family and criminal cases.
Signed: January 20, 1964, Belgrade
In force: August 2, 1964
Text: 538 UNTS 197

25. German Democratic Republic-Albania, <u>see</u> No. 3.

26. German Democratic Republic-Bulgaria, <u>see</u> No. 11.

27. German Democratic Republic-Czechoslovakia, <u>see</u> No. 19.

28. German Democratic Republic-Hungary
Title: Treaty concerning legal assistance in civil, family and criminal cases.

Signed: October 30, 1957, Berlin
In force: June 23, 1958
Text: 408 UNTS 3
Protocol: Signed: February 10, 1977; in force: August 5, 1977; text: GBl.II, 1977, p. 203.

29. German Democratic Republic-Poland
Title: Treaty concerning legal relations in civil, family and criminal cases.
Signed: February 1, 1957, Warsaw
In force: October 11, 1957
Text: 319 UNTS 115
Protocol: Signed: April 18, 1975; in force: April 2, 1976; text: GBl.II, No. 5, p. 139.

30. German Democratic Republic-Romania
Title: Treaty concerning legal assistance in civil, family and criminal cases.
Signed: July 15, 1958, Bucharest
In force: March 25, 1959
Text: 395 UNTS 3

31. German Democratic Republic-USSR
Title: Treaty concerning legal assistance in civil, family and criminal cases.
Signed: September 19, 1979, Moscow
In force: August 3, 1980
Text: GBl.II, 1980, p. 12

32. German Democratic Republic-Yugoslavia
Title: Treaty concerning legal relations in civil, family and criminal cases.
Signed: May 20, 1966, Belgrade
In force: January 19, 1967
Text: GBl.,I, No. 3, February 24, 1967, p. 7

33. Hungary-Albania, see No. 4.

34. Hungary-Bulgaria, see No. 12.

35. Hungary-Czechoslovakia, see No. 20.

36. Hungary-German Democratic Republic, see No. 28.

37. Hungary-Poland
Title: Treaty concerning legal relations in civil, family and criminal cases.
Signed: March 6, 1959, Budapest
In force: February 26, 1960
Text: 432 UNTS 3

38. Hungary-Romania
Title: Treaty concerning legal assistance in civil, family and criminal cases.

Signed: October 7, 1958, Bucharest
In force: May 7, 1959
Text: 416 UNTS 199

39. Hungary-USSR
Title: Treaty (with Protocol) concerning the provision of legal assistance in civil, family and criminal cases.
Signed: July 15, 1958, Moscow
In force: January 4, 1959
Text: 322 UNTS 3

40. Hungary-Yugoslavia
Title: Treaty concerning mutual legal assistance.
Signed: May 7, 1960, Belgrade
In force: February 13, 1961
Text: 519 UNTS 237

41. Poland-Albania, none.

42. Poland-Bulgaria, <u>see</u> No. 13.

43. Poland-Czechoslovakia, <u>see</u> No. 21.

44. Poland-German Democratic Republic, <u>see</u> No. 29.

45. Poland-Hungary, <u>see</u> No. 37.

46. Poland-Romania
Title: Treaty concerning legal assistance in civil, family and criminal cases.
Signed: January 25, 1962, Budapest
In force: December 6, 1962
Text: 468 UNTS 3

47. Poland-USSR
Title: Treaty (with Additional Protocol) concerning legal assistance and relations in civil, family and criminal cases.
Signed: December 28, 1957, Warsaw
In force: June 8, 1958
Text: 320 UNTS 3
Protocol: Signed: January 23, 1980; in force: November 16, 1980; text: <u>Vedomosti</u> 1980, p. 1071.

48. Poland-Yugoslavia
Title: Treaty concerning legal relations in civil, family and criminal cases (with exchange of letters).
Signed: February 6, 1960, Warsaw
In force: June 5, 1963
Text: 521 UNTS 37

49. Romania-Albania, see No. 6.

50. Romania-Bulgaria, see No. 14.

51. Romania-Czechoslovakia, see No. 22.

52. Romania-German Democratic Republic, see No. 30.

53. Romania-Hungary, see No. 38.

54. Romania-Poland, see No. 46.

55. Romania-USSR
    Title: Treaty concerning the provision of legal assistance in civil, family and criminal cases.
    Signed: April 3, 1958, Moscow
    In force: September 19, 1958
    Text: 313 UNTS 167

56. Romania-Yugoslavia
    Title: Treaty concerning legal assistance.
    Signed: October 18, 1960, Belgrade
    In force: March 8, 1961
    Text: Of. Bul. of R., No. 6, February 6, 1961
    Additional Protocol: Of. Bul. of R., No. 48, May 8, 1972

57. USSR-Albania, see No. 7.

58. USSR-Bulgaria, see No. 15.

59. USSR-Czechoslovakia, see No. 23.

60. USSR-German Democratic Republic, see No. 31.

61. USSR-Hungary, see No. 39.

62. USSR-Poland, see No. 47.

63. USSR-Romania, see No. 55.

64. USSR-Yugoslavia
    Title: Treaty concerning legal assistance in civil, family and criminal cases.
    Signed: February 24, 1962, Moscow
    In force: May 26, 1963
    Text: 471 UNTS 195

65. Yugoslavia-Albania, none.

66. Yugoslavia-Bulgaria, see No. 16.

67. Yugoslavia-Czechoslovakia, see No. 24.

68. Yugoslavia-German Democratic Republic, <u>see</u> No. 32.

69. Yugoslavia-Hungary, <u>see</u> No. 40.

70. Yugoslavia-Poland, <u>see</u> No. 48.

71. Yugoslavia-Romania, <u>see</u> No. 56.

72. Yugoslavia-USSR, <u>see</u> No. 64.